IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 423 OF 2005

M/s. Kundil Ispat Ltd.,
Ponda, Goa. ... Petitioner

versus

Union of India
through the Joint
Secretary and others. ... Respondents

Mr. S. G. Dessai, Senior Advocate with Mr. B. Prabhu, Advocate for the Petitioner.

Mr. J. S. Vaz, Central Government Standing Counsel for Respondent No.1.

CORAM : D. D. SINHA &
N. A. BRITTO, JJ.

DATE : 21ST NOVEMBER, 2005.

P.C.:-

Heard Mr. S. G. Dessai, the learned Senior Counsel for the petitioner and Mr. J. S. Vaz, the learned Central Government Standing Counsel for the respondent no.1.

The learned Senior Counsel states that the petitioner has preferred an appeal before the Commissioner under Section 35-A of the Central Excise Act, 1944(Act, for short) in May, 2004. The learned Senior Counsel contends that in view of sub-section 4-A of Section 35-A of the Act ordinarily the Commissioner is expected to dispose of the Appeal within six months from the date of filing of the Appeal. It is contended that in the instant case, the Appeal is pending since May, 2004 and directions be given to the Commissioner to dispose of the Appeal within the stipulated period and also prays that the statutory deposit required to be made by the petitioner under Section 35-F of the Act may be dispensed with, since the Appeal shall be decided by the Authority within the stipulated period.

The learned Counsel for the respondent no.1 on the other hand submitted that in view of Section 35-F of the Act it is required to give statutory deposit and the same may not be dispensed with. In the backdrop of the above referred fact, particularly in view of Section 35-A of the Act, it is expected of the Commissioner to dispose of the Appeal within a period of six months from the date on which it is filed. In the instant case, more than six months have already been lapsed and, therefore, the prayer made by the learned Senior Counsel for direction to respondent no.3 to dispose of the Appeal within the stipulated period appears to be just and proper. Similarly,

since we are inclined to issue directions to respondent no.3 to dispose of the Appeal within the stipulated period of four weeks from the date of receipt of this Order, in the interest of justice, the statutory deposit under Section 35-F of the Act is dispensed with as an exceptional case and looking to the facts and circumstances which exist in the present case. This dispensation does not mean that the petitioner is absorbed of the liability, which otherwise he has to pay forthwith if the decision in appeal goes against him.

In the circumstances, Writ Petition is dismissed as withdrawn. Respondent No.3 is directed to dispose of the Appeal within a period of four weeks from the date of receipt of this Order on its own merit and according to law and procedure applicable in this regard.

D. D. SINHA, J.

N. A. BRITTO, J.

RD.